

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

CAROL AL-KASSAB,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

March 25, 2003

No. 239512

Wayne Circuit Court

LC No. 01-006044-01

Before: Meter, P.J., and Jansen and Talbot, JJ.

TALBOT, J., (*concurring in part and dissenting in part*).

I concur with the majority in affirming defendant's conviction for the reasons given in the majority opinion. However, I respectfully dissent from my colleagues' conclusion that the sentencing court's departure from the sentencing guidelines was supported by substantial and compelling reasons.

The sentencing court improperly relied on two factors to support its departure from the sentencing guidelines. First, as the majority correctly observes, the court improperly considered defendant's lack of a prior criminal record as a basis for departure because this factor "is already taken into consideration in scoring the prior record variables of the sentencing guidelines" and the court did not make a finding that this factor had "been given inadequate or disproportionate weight." *People v Babcock*, 244 Mich App 64, 79; 624 NW2d 479 (2000); MCL 769.34(3)(b). Second, I conclude that the existence of a romantic relationship between defendant and the victim, although objective and verifiable, was not an appropriate consideration for departure in this case. The court erroneously believed that the relationship had ended only "a few months prior to the incident date" when the record shows that the relationship had been over for more than a year. To the extent that the court may have believed that the recentness of the breakup explained or contributed to defendant's emotional state and her "temporary loss of emotional control," this error is not insignificant. Notably, the record indicates that defendant may have stalked her former boyfriend for more than a year, and may have damaged his vehicle before the underlying crime was committed. The court did not address this at sentencing.

Moreover, the court failed in its duty to specifically articulate the reasons why the factors it identified collectively provided "substantial and compelling" reasons to depart from the guidelines. *People v Daniel*, 462 Mich 1, 9; 609 NW2d 557 (2000). My review of the record does not reveal anything about even the properly considered factors that "keenly" or

“irresistibly” grabs my attention. *Id.* at 9-10. Because the sentencing court relied on two improper factors and because the court failed to “specifically articulate the reasons why the factors it identifies and relies upon collectively provide ‘substantial and compelling’ reasons to except the case from the legislatively mandated regime[.]” *Daniel, supra* at 9, I would hold that the court abused its discretion in imposing a sentence outside the guidelines range. Accordingly, I would remand this matter for resentencing.

/s/ Michael J. Talbot